WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

NASTASSIA MOLINA, ***Applicant***

vs.

THE JONATHAN CLUB;
PACIFIC COMPENSATION INSURANCE COMPANY, ***Defendants***

Adjudication Numbers: ADJ17308688; ADJ17308692; ADJ17308695
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Cost petitioner, Physical Rehabilitation Services, Arbi Mirzaians, D.C., seeks reconsideration of the Findings of Fact and Orders (F&O) issued by the workers' compensation administrative law judge (WCJ). By the F&O, as relevant here, the WCJ found that applicant incurred medical-legal costs on behalf of cost petitioner for its initial consultation and report, and medical treatment costs for subsequent reports.

Cost petitioner contends the WCJ erred by finding cost petitioner's reports prepared after the initial report were not payable as medical-legal costs.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied except to correct clerical errors as to the dates of the contested reports.

We have considered the allegations of the Petition for Reconsideration and Answer and the contents of the report of the WCJ with respect thereto. Based on our review of the record, for the reasons stated in the WCJ's report, and for the reasons discussed below, we will grant the Petition, and as our Decision After Reconsideration, we will affirm the F&O, except that we will amend the F&O, Findings of Fact #4 and #5 and Orders #1 and #2, to reflect the correct dates of service provided by cost petitioner.

FACTS

The WCJ's Report detailed the following relevant facts [1]:

The injured employee is a 38-year-old baker who filed two claims for injury with the Defendant. In ADJ 17308688 she sustained burns to her right hand and arm on 11/26/2022. In ADJ 17308692 she claimed cumulative trauma to multiple orthopedic body parts during the period 5/13/2019 through 12/14/2022.

The Petitioner is the lien claimant and cost petitioner Physical Rehabilitation Services which is Dr. Abri Mirzaians D.C.

* * *

[T]his matter only involves [ADJ17308692] only, which is a cumulative trauma claim to multiple body parts.

The claim was denied. The Applicant proposed Dr. Mirzaians as her primary doctor for this claim (Ex. 1). Dr. Mirzaians (Physical Rehabilitation Services) first saw the patient on 2/13/2023 (see Ex. 8[, p. 4, entry 1]). He wrote an initial report dated [April 5, 2023]. [(Ex. 3).] What followed were six follow up office visits for chiropractic care on 6/2/2023, 7/12/2023, 8/1/2023, 8/8/2023, 8/29/2023 and 9/5/2023. [(Ex. 8, p. 4, entries 4-9).] These visits were accompanied by four reports dated 8/25/2023, 10/2/2023, 11/13/2023, and 12/27/2023. [(Exs. 4-7).] The reports were all billed as medical-legal services under ML202 at the rate of $1,316.25 per report. [(Ex. 8, p. 5, entries 1, 3-5).] The 4 office visits of 8/1/2023, 8/8/2023, 8/29/2023 and 9/5/2023 were all billed as treatment under CPT Code 20999 in the surgery section of the fee schedule only described as "Unlisted Procedure." [(Ex. 8, p. 4, entries 6-9).] For the best view of the billing go to pp.4-5 of Ex. 8.

The normal WC issues were resolved by way of a compromise and release on 7/5/2024.

The billing from Ex. 8 comes to $16,197.78 which (for 7 office visits) comes to about $2,300 per visit to the chiropractor.

A review of the reports state that each visit took around 20 minutes.

The claimant (one could call him both a lien claimant and a cost petitioner) claims that all the reports should be paid as medical-legal under CPT Code ML202 [see Cal. Code of Regs. sec. 9795(c)]. Defendant maintains that these are not medical-legal procedures, and hence they should be billed as medical treatment.

[1] The WCJ's summary of facts in the Report were edited to reflect correct dates of service and to add exhibit numbers, page numbers, and/or page locations for clarity.

> The matter came on for trial 6/30/2025. It was determined that Applicant did sustain a work related injury.
>
> It was also determined by the undersigned that the billings for the reports of 8/25/2023, 10/2/2023 and[sic] 11/13/2023 and 12/27/2203 should be considered medical treatment and not medical-legal.

(Report, August 18, 2025, p. 1, ¶ 1-2, p. 2, ¶ 1-8.)

DISCUSSION

I.

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on August 18, 2025, and 60 days from the date of transmission is October 17, 2025. This decision is issued by or on October 17, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on August 18, 2025, and the case was transmitted to the Appeals Board on August 18, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 18, 2025.

II.

Here, the issue before us is whether the WCJ erred in finding the reports prepared by cost petitioner on August 25, 2023, October 2, 2023, November 13, 2023, and December 27, 2023 payable as medical treatment, rather than medical-legal costs, as argued by cost petitioner.

A lien claimant holds the initial burden of proof to establish all elements necessary to establish their entitlement to payment for a medical-legal expense before the burden shifts to the defendant. (See Lab. Code, §§ 3205.5, 5705; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 (Appeals Board en banc).)

Labor Code section 4060(b) allows a medical-legal evaluation by the treating physician. (Lab. Code § 4620 (a).) Labor Code section 4620(a) defines medical-legal expense as "any costs and expenses incurred…for the purpose of proving or disproving a contested claim." (Lab. Code § 4620 (a).)

Labor Code section 4600(a) and (b) provides the following about medical treatment:

> (a) Medical, surgical, chiropractic, acupuncture, licensed clinical social worker, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. In the case of the employer's

neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

(b) As used in this division and notwithstanding any other law, medical treatment that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27.

(Lab. Code § 4600(a) & (b).)

Here, cost petitioner provided medical treatment to applicant after defendant did not provide it; as discussed below, there is simply no legal authority to support cost petitioner's position that because it reviewed applicant's medical records, its reporting was transformed into medical-legal reporting.

AD Rule 9793(h), in relevant part, further provides the following:

(h) … **The cost of medical evaluations**, diagnostic tests, and interpreters **is not a medical-legal expense** *unless* it is incidental to the production of a comprehensive medical-legal evaluation report, follow-up medical-legal evaluation report, or a supplemental medical-legal evaluation report **and all of the following conditions exist**:

(1) The report is prepared by a physician, as defined in Section 3209.3 of the Labor Code.

(2) The report is obtained **at the request** of a party or parties, the administrative director, or the appeals board for the purpose of proving or disproving a contested claim **and** addresses the disputed medical fact or facts specified by the party, or parties or other person who requested the comprehensive medical-legal evaluation report. Nothing in this paragraph shall be construed to prohibit a physician from addressing additional related medical issues.

(3) The report is capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim, considering the substance as well as the form of the report, as required by applicable statutes, regulations, and case law.

(4) The medical-legal examination is performed prior to receipt of notice by the physician, the employee, or the employee's attorney, that the disputed medical fact or facts for which the report was requested have been resolved.

(5) In the event the comprehensive medical-legal evaluation is served on the claims administrator after the disputed medical fact or facts for

> which the report was requested have been resolved, the report is served within the time frame specified in Section 139.2(j)(1) of the Labor Code.

(Cal. Code Regs., tit. 8, § 9793(h)(emphasis added).)

Alternatively, Rule 9785 sets forth reporting requirements of the primary treating physician, which includes making progress reports every 45 days when continuing medical treatment is provided. (Cal. Code Regs., tit. 8, § 9785(f)(8).)

Here, we find cost petitioner did not satisfy their burden in establishing entitlement to payment of medical-legal expenses for the reports prepared on August 25, 2023, October 2, 2023, November 13, 2023, and December 27, 2023, and we agree with the WCJ's conclusion that those reports were payable as medical treatment reports.

As explained by the WCJ in the Report:

> It is established that a treating physician can prepare medical-legal reports and be compensated under Cal. Lab. Code sec. 4620 et al for same. *Vargas v. Barrett Business Services* 2016 Cal. Wrk. Comp. P.D. LEXIS 534. However it is also important to note that the standard progress reports are also considered to be part of medical treatment such as pr-2 reports simply documenting progress as required every 45 days by Cal. Code of Regs. sec. 9785(f). A medical-legal report (as opposed to a mere progress report by a treating physician) must be requested by a party in order to prove or disprove a disputed legal issue. Cal. Code of Regs. sec. 9793(h).
>
> In this case only the initial exam with a medical report is medical-legal. The remaining reports from Dr. Mirzaians were mere progress reports of the treating physician. They were not requested by anyone, nor do they identify any contested issue. The provision of progress reports is one of the duties of the primary treatment physician. Cal. Code of Regs. sec. 9785. But unless someone specifically requests a medical-legal opinion which shall be used to determine a dispute, those progress reports are medical treatment costs.

(Report, August 18, 2025, p. 4, ¶ 1-2.)

The WCJ's rationale is consistent with our past practices. We considered whether reports prepared by a primary treating physician qualified as medical-legal expenses in *Babakitis v. Pac. Home Works* (2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 488*.[2] In finding the lien claimant in

[2] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp.*

Babakitis was not entitled to recover on its lien for two medical reports billed as medical-legal expenses, relevant facts included that applicant's attorney did not request lien claimant to issue any medical-legal reports, costs were not incurred to prove or disprove disputed issues, and reports labeled as medical-legal reports was not determinative. (*Id*, at *5-*8.)

In this case, applicant's attorney issued a letter to cost petitioner on January 31, 2023, in relevant part:

> I request that [cost petitioner] review all previous records and prepare an initial comprehensive medical-legal report which provides all of the medical information required by 8 CCR §9785, including your opinion on all medical issues necessary to determine the employee's eligibility for compensation. 8 CCR §§9785(d) – (g), 10606(b).
>
> Your report must address causation of the applicant's medical condition and whether the treatment provided to applicant was reasonably required to cure or relieve the injured worker from the effects of his or her injury. *Labor Code §4600(a), 8 CCR §§9793(e), 10606(b).* Also, take a full history of all complaints, whether advised that the body parts are admitted or disputed by claims.

(Exh. 1, Applicant Attorney's Election Letter, January 31, 2023, p. 1, ¶ 2.)

We agree with the WCJ's conclusion that the initial report dated April 5, 2023 by cost petitioner qualified as a medical-legal expense, as the aforementioned language constituted a request by applicant for a medical-legal report to prove or disprove a disputed issue under Labor Code sections 4060 and 4620.

In contrast, the reports dated August 25, 2023, October 2, 2023, November 13, 2023, and December 27, 2023 reflect no evidence of a specific request for cost petitioner to prepare medical-legal reports as required by AD Rule 9793(h)(2). In Applicant Attorney's Election Letter, applicant's attorney writes, in relevant part:

> Should you initiate treatment of the applicant, please supplement your routine "Primary Treating Physician's Progress Report" (DWC Form PR-2) with periodic medical-legal reports when these would be advisable for purposes of clarification or elaboration on information beyond what could reasonably be provided in the PR-2.
>
> Please submit medical-legal progress reports every forty-five (45) days as required by *8 CCR §9785(f)(8).*

Appeals Bd. (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) Here, we refer to *Babakitis* because it considered a similar issue.

(Exh. 1, p. 1, ¶ 4-p. 2, ¶ 1-2.)

There is no evidence applicant's attorney asked cost petitioner to address any viable dispute at issue when preparing the reports on August 25, 2023, October 2, 2023, November 13, 2023, and December 27, 2023. (See, *Babakitis* at *6-*7, [labeling a report a medical-legal report does not make it one if the report does not meet the statutory and regulatory requirements of a medical-legal expense].

Lastly, we consider cost petitioner's argument that the reports in question "each contain review of records required to rendered[sic] the reporting substantial medical evidence and be in compliance with 8 CCR 9795(c) ML202 billing code billed for these dates of service and reporting" making them reimbursable as medical-legal reports. (Petition, August 8, 2025, p. 4, ¶ 6.) Cost petitioner appears to misunderstand the application of AD Rule 9795(c), which sets the fee schedule for medical-legal fees, but it does not, in and of itself, confer an entitlement to medical-legal fees merely by satisfying the fee schedule requirements. (Cal. Code Regs., tit. 8, § 9795(c).)

We were unable to discern any substance to cost petitioner's remaining objections as they appear to be merely pro forma, and thus, we do not consider them further.

As acknowledged by the WCJ, the F&O contained clerical errors, which requires amending Findings of Fact #5 and Order # 2. (Report, August 18, 2025, p. 2, ¶ 9- p. 3, ¶ 1.) We agree but also conclude that Finding of Fact #4 and Order #1 require amending for similar reasons.

Accordingly, we grant the Petition for Reconsideration, and affirm the F&O, except that we amend it to reflect the correct dates of service provided by cost petitioner.

For the foregoing reasons,

IT IS ORDERED that cost petitioner's Petition for Reconsideration of the Findings of Fact and Orders issued on July 14, 2025 by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the July 14, 2025 Findings of Fact and Orders is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

4. The Applicant incurred medical legal costs on behalf of Physical Rehabilitation Services for its initial consultation and report of 4/5/2023 under ML 201.

5. Physical Rehabilitation Services performed treatment and prepared progress reports of 8/25/2023, 10/2/2023, 11/13/2023, and 12/27/2023.

* * *

AWARD

* * *

1. Medical-legal services reimbursement to Physical Rehabilitation Services on 4/5/2023 under ML 201.

2. Reimbursement for medical treatment reports of 8/25/2023, 10/2/2023, 11/13/2023, and 12/27/2023 in amounts to be determined by the parties.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 17, 2025

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

PHYSICAL REHABILITATION SERVICES
AV MANAGEMENT COLLECTION
LAW OFFICES OF BRADFORD & BARTHEL

DC/*cs*

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
CS